

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

LETTERS PATENT APPEAL No 1197 of 1997

in

SPECIAL CIVIL APPLICATION No 1906 of 1997

For Approval and Signature:

Hon'ble MR.JUSTICE C.K.THAKKER and
MR.JUSTICE A.R.DAVE

- =====
1. Whether Reporters of Local Papers may be allowed to see the judgements? Yes
 2. To be referred to the Reporter or not? No
 3. Whether Their Lordships wish to see the fair copy of the judgement? No
 4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? No
 5. Whether it is to be circulated to the Civil Judge?

No

WIPRO LIMITED

Versus

STATE OF GUJARAT

Appearance:

MR PB MAJMUDAR for Appellant

MR. S.R. DIVETIA, A.G.P., for Respondent No. 1, 2

CORAM : MR.JUSTICE C.K.THAKKER and

MR.JUSTICE A.R.DAVE

Date of decision: 17/11/97

ORAL JUDGEMENT (per C.K. Thakker, J.)

Admitted. Mr. S.R. Divetia, learned A.G.P.
appears and waives service of notice of admission. In

the facts and circumstances of the case, the matter is taken up for final hearing today.

This appeal is filed against the order passed by the learned Single Judge summarily dismissing Special Civil Application No. 1906 of 1997 on August 28, 1997. The order reads thus;

"Heard the Learned Counsel for the parties. I find no merit in this application and the same is accordingly rejected."

Certain facts are not in dispute by and between the parties. The appellant is a company carrying on business in manufacture of vegetable oil (vanaspati) at Bhavnagar. On December 8, 1995, the appellant sent intimation to the Collector, Bhavnagar, respondent No.2 herein, about sending of 600 tins of vanaspati out of Gujarat. The goods were to be sent to M/s. Britannia Industries Ltd., Madras. Respondent No.2 passed an order on December 12, 1995 at 9.00 p.m. It was to remain operative for seven days, that is, upto December 19, 1995, 9.00 p.m. On December 19, 1995, at about 15.15 hours, a truck duly loaded with the goods left the factory of the appellant from Bhavnagar. On December 20, 1995, the truck reached at Bhilad Check Post at about 17.00 hrs. (5.00 p.m.). The truck was intercepted by respondent No.2. The truck as well as the goods were seized on the ground that the period had expired. On 1st January 1996, the goods and the truck were released on appellant furnishing bank guarantee. A show-cause notice was issued to the appellant on January 18, 1996 calling upon him to explain as to why bank guarantee furnished by the appellant should not be confiscated and appropriate proceedings should not be initiated against him. Explanation was submitted by the appellant and ultimately, by an order dated April 4, 1996, respondent No.2 held that the appellant had committed breach of condition of intimation. He, therefore, passed an order confiscating 25% of the amount of bank guarantee which came to about Rs. 2 lakhs. An appeal was filed to the Government which was decided by the Joint Secretary, Food and Civil Supplies Department, respondent No. 1 herein, who partly allowed it, modified the order by reducing the amount from about 2 lakhs to Rs. 20,000/-. It was that order which was challenged by the appellant by filing the above petition. As stated above, the learned Single Judge dismissed the petition summarily which order is challenged by the appellant in this Letters Patent Appeal.

Three contentions have been raised by the appellant. Firstly, the order passed by the learned Single Judge is not a speaking order. The petition was summarily dismissed without recording reasons. Secondly, there was no breach of either the provisions of the Essential Commodities Act, 1955 (hereinafter referred to as 'the Act') or of the Gujarat Essential Articles Control Order, 1981 (hereinafter referred to as 'the Control Order') or of the order passed by respondent No. 2 and hence no order could have been passed against the appellant. Thirdly, even if the court comes to the conclusion that there was some non-compliance or breach of some condition by the appellant, it was a technical breach and an amount to the tune of Rs. 20,000/- could not have been confiscated.

Mr. Divetia, learned A.G.P., on the other hand, supported the order passed by the authorities. He submitted that the goods ought to have been taken away outside the border of Gujarat State before December 21, 1995. It was not done as goods did not cross the border of the State within the stipulated time and hence the action was taken which could not be said to be illegal or contrary to law. He further submitted that no ground was shown by the appellant for such delay and hence the action could not be said to be illegal. He also urged that amount of Rs. 20,000/- could not be said to be excessive as goods were worth Rs. four lakhs.

In the facts and circumstances of the case, in our opinion, the LPA deserves to be allowed.

We have been taken to various provisions of the Act as well as of the Control Order. No provision has been pointed out to us by the learned A.G.P. which required the appellant to take goods outside the border of Gujarat within the stipulated period. An intimation conveyed to the appellant by the Collector, respondent No.2, was also produced on record. Looking to that also, it is clear that there is no condition which enjoins the appellant to take away the goods beyond the border of Gujarat within the stipulated period. To recall, the requirement was only of intimation which was given. The appellant was allowed to take goods within the stipulated period. It was done. Mr. Divetia submitted that the interpretation put forward by the Collector that the goods ought to have crossed border of Gujarat within the stipulated time cannot be said to be illegal. It is true that the Collector has taken that view which was upheld by the State Government but neither under the provisions of the Act nor under the Control Order, such a condition

was required to be complied with. In our opinion, therefore, the order passed by the Collector and partly modified by the State Government, deserves to be quashed and set aside. The learned Single Judge has also committed an error in dismissing the petition.

For the foregoing reasons, the appeal is allowed. The order passed by the Collector, respondent No. 2 and partly modified by the State Government, respondent No.1 as confirmed by the learned Single Judge, are hereby quashed and set aside. The action taken by the authorities is illegal and unlawful and is quashed and set aside. In the facts and circumstances, there shall be no order as to costs.

*hn/ckt